

Dated : 10.08.2009

**BEFORE THE HON'BLE LOKAYUKTA
Justice Manmohan Sarin**

Complaint No.C-111/Lok/2009/

Lokayukta on its own motion in Re:

Sh. P.K.Sharma, Zonal Engineer, DJB &
Sh. Pramod Kumar, Junior Engineer, DJB

Notices

Delhi Junior Engineer Association (Regd.) through its President Mr.
Umesh Rana, and General Secretary Sh.K.D.Sharma

Applicant/Intervener

Vs.

Sh. Bharat Singh, MLA

Respondent

ORDER

1. Upon taking suo moto notice of a news item titled, "Delhi Jal Board (DJB) Engineers beaten up" published in "The Hindu" dated 24.04.09, notices were issued to Sh.Bharat Singh, MLA, as to why an inquiry u/s 7 of the Delhi Lokayukta & Upalokayukta Act, 1995, hereinafter referred to as the Act, into the allegations that two engineers were beaten up at his behest for refusing to hire Water Tankers, be not conducted. Notices were also issued to the concerned engineers, Sh.Pramod Kumar, J.E. and Sh.P.K.Sharma, Z.E. to ascertain the factual position.

2. Respondent, Sh. Bharat Singh, MLA in his reply claimed the news item to be a false one, a conspiracy of his political opponents to malign him. He denied exerting any pressure on the officials/staff of Delhi Jal Board, for engagement of any water tanker stating that neither he nor any member of his family owned or operated any water tanker with the Delhi Jal Board. He denied any involvement in the incident stating that he was not even in Delhi on the said date. Rather, the malpractices in Delhi Jal Board resulting in non utilization of the allotted strength and illegal sale of water tankers instead of supply of water to the general public, led to public anger and dissatisfaction.

His opposition to the malpractices, might have infuriated the staff, who connived with his opponents to convert the accident which the engineers had on their motorbike, into one of assault. His office being a public place, was visited by hundreds of members of the public, for redressal of their grievances.

3. Evidence by way of affidavit was filed by Sh. Pramod Kumar, Jr. Engineer and Sh. P.K. Sharma, Zonal Engineer, who also recorded their statements on oath. Sh. Radhey Shyam, Ex. Engineer also deposed at length. The said engineers were duly cross examined by the Respondent's counsel.

Sh. Pramod Kumar & Sh. P.K. Sharma narrated in graphic detail the sequence of events and incident of 20th April 2009. The depositions also covered the disengagement of tanker bearing No. DLIL – 6742 following exhibit PW – 1/1, a letter dated 9.4.09, purportedly written by the Respondent, MLA, conveying the mal operation of the said tanker and complaints in relation thereto. The said tanker was disengaged without any inquiry or specific complaint. Consequently, two fresh tankers were deployed. As per the engineers they had incurred the wrath of the MLA's supporters for the delay in engagement of the tankers. Application had been submitted for tanker No. 5080 on 24.2.09. A fresh application for two tankers including 5080, was submitted on 15.3.09.

4. The Ex. Engineer deposed regarding pressure being exerted for engagement of tankers by supporters of MLA. The two engineers, it is claimed were mercilessly beaten to ensure that they toe the line of the MLA and his supporters, promptly in future.

5. Affidavit of Sh. Bharat Singh, in evidence was filed on 21.07.09. On 24.7.09, when the case was fixed for Respondent's statement, Mr. Bharat Singh, MLA desired to make a statement making amends. He tendered an unconditional apology, Exhibit RW – 1/1. He stated that he had no objection to the re-engagement of the tanker DLIL 6742 which had been disengaged, following the orders passed on exhibit PW – 1/1 or to DJB disengaging any tanker engaged in lieu thereof.

Mr.Bharat Singh, MLA, has prayed for a quietus being applied to the matter in view of the statement made and the apology tendered.

6. Let us consider the matter in the light of the above.

The Incident:-

It was a hot and humid afternoon on 20.04.09. The Najafgarh area was facing acute water shortage and tankers were being deployed by the Delhi Jal Board. At about 3.00 P.M, Sh.Pramod Kumar, JE of DJB received a call on his mobile phone purporting to be from the office of Sh.Bharat Singh, MLA, calling him and the Zonal Engineer for discussion of the water problem. Sh.Pramod Kumar on receiving the phone, requested his superior Sh.P.K.Sharma, Z.E. who being busy was initially disinclined to accompany him to the office of Sh.Bharat Singh, MLA for the meeting, but acceded to finally. On reaching the office of the MLA, both the engineers were escorted to an inner room by a young man and told to wait for MLA. They were served tea. After sometime, six to seven musclemen entered. Sh.Pramod Kumar was told by one of persons that he had been called to make him understand as to how tankers were to be engaged and the manner of their running in the Najafgarh area. Thereafter two persons began beating Sh.Pramod Kumar, JE and Sh.P.K.Sharma, Z.E. Both were mercilessly beaten resulting in blunt injuries to them. Sh.Pramod Kumar was bleeding from the nose. He was allowed to clean and wipe the blood from his body. Sh. Pramod Kumar was also given a painkiller. Both the engineers were told not to disclose the happening to any one. The two engineers were shell shocked and traumatized. So much so that on approaching the doctors for medical treatment, one mentioned that he had fallen from stairs and the other told he had an accident while driving his motor bike. Both did not attend the office nearly for three weeks. However, the entire office staff was aware of some mishap since they had been called to the office of the MLA, for a discussion.

7. Subsequently, when the Delhi Jal Board, Junior Engineer Association intervened and assured the two engineers of their support, they mustered courage to reveal their ordeal. An FIR bearing No. 132/09 dated 25.4.09 was registered under section 353, 186,332,342,506 & 34 of IPC, P.S Najafgarh. A report had been called from the Commissioner of Police regarding the progress of investigation in the case. As per the report submitted, the telephone call received by Sh. P.K. Sharma on his mobile phone had been traced to a Personal Assistant/staff member of the MLA. Two arrests had been made, however, the engineers had not been able to identify the arrested persons as their assailants.

Analysis/Evaluation :-

8. It is not disputed that the Respondent Sh. Bharat Singh, MLA was not present at the time of the incident. The assailants are also not known to the Engineers. It has come in evidence of Executive Engineer that pressure as being exerted on him, for engagement of tankers belonging to the supporters of the MLA. Exhibit PW-1/1 dated 9.4.09 purported to have been signed by the MLA, complained about the improper functioning of tanker No. DLIL 6742. This was processed post haste. On 15th April itself i.e the date of receipt in the concerned department, the tanker in question was disengaged without any inquiry into its malfunctioning or any specific complaint. Instead two other tankers were directed to be engaged. Applications for the engagement of these tankers had been made on 24th February & 15th March 09. It is the case of the engineers and their association that the two engineers had incurred the wrath of the MLA and his supporters for the delay in engagement of the tankers by disengagement of the tanker as required. Besides, it has come in evidence that the two engineers who went to the MLA's office in response to call received from his staff were confined in a room and beaten mercilessly, the nature of injuries sustained including that of the ear drum are consistent with beatings. The above has been corroborated by records of treatment and medical reports produced on record. When the case was fixed for respondent's evidence, the apology, RW-1 which is reproduced verbatim was tendered.

“RW-1:- Statement of Sh.Bharat Singh, S/o Late Sh.Jai Singh R/o H.No.251, Village and Post Office Dichaon Kalan, New Delhi-110043, MLA Najafgarh Constituency.

On S.A.

I, Bharat Singh, Member of Legislative Assembly, Najafgarh Constituency hereby tender my heart felt and unqualified apology for the highly condemnable and regretted incident of 20th April, 09 at my constituency office, where two officers of the Delhi Jal Board were beaten. Although, I was not present at the office and I had not issued any instructions to any of my supporter for the same, I nevertheless take moral responsibility of the incident and apologize to Mr.P.K.Sharma and Mr.Pramod Kumar on my behalf and on behalf of perpetrators of the incident. I will take steps to ensure that similar or such incident does not recur in future. As far as FIR No.132 /09 registered at Police Station Najafgarh is concerned, the law will take its own course and the above apology may not in any manner impede or affect the investigation of the case.

I, further state that I have no objection if water tanker No.DLIL-G 6742 which had been disengaged following exhibit PW-1/1 is redeployed by the DJB. It would be for the DJB to consider any increase in strength or disengage any other tanker in lieu of the above tanker which had been disengaged pursuant to exhibit PW-1/1 without any investigation into the complaint.

RO & AC

(Bharat Singh)
30.07.09

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LOKAYUKTA”

9. Sh.Bharat Singh, MLA who had earlier even disputed the factum of the incident has tendered unconditional apology in the above terms. He has taken moral responsibility for the incident which has taken place in his offices premises. He states that he would take steps to ensure that such incident does not recur. The unconditional apology is on his own behalf and on the behalf of the perpetrators of the incident.

It is to be borne in mind that the respondent himself was not present in the office at the time of the incident. No evidence regarding assault having been directed by the respondent MLA, has come on record. The concerned officers as well as the DJB Junior Engineers Association have expressed their complete satisfaction with the unconditional apology tendered by the respondent and have stated that the same is a moral vindication of their stand. Moreover, the respondent MLA has also accepted that he has no objection to the reengagement of the tanker, which has been disengaged following Exhibit PW-1/1. The apology is not to affect in any manner, the investigation and action pursuant thereto, to bring the culprits to book, in accordance with Law.

10. The Respondent being an elected representative is expected to uphold the law and conduct himself in accordance with norms of integrity and standard of conduct expected from members of his class i.e the elected representatives. The elected representatives including the Respondent are not expected to act in discharge of their public duty in a manner so as to gain benefit for themselves, their family or friends.

Applying the above norms to the apology tendered in this case, it would seen that Respondent has accepted full moral responsibility for the incident and has also assured of his endeavor to ensure that such an incident does not recur. Thus, the Respondent realizes his duty to control and rein in his supporters and constituents, to uphold the Law.

The Respondent has also given his no objection for the re-engagement of tanker that had been disengaged following the letter purportedly signed by him without any inquiry or investigation, thus paving the way for justice to be done. In these circumstances the apology deserves to be accepted. The apology is accepted and notice under Section 7 of the Act is discharged.

Copy of this order be endorsed to the concerned Executive Engineer of DJB for passing necessary orders in accordance with Law, after conduct of proper inquiry, regarding re-engagement of tanker No. 6742, copy be also sent to the Commissioner of Police, Delhi.

The above case has also brought to fore the dire need of framing and codifying the norms and rules of conduct so as to guide and assist the elected representatives in discharge of their duties to their constituents and public at large.

Public Functionaries under the Delhi Lokayukta & Upalokayukta Act 1995, include, inter alia, members of the Legislative Assembly and the members of the Municipal Corporation of Delhi. Actions of Public Functionaries, when they fail to act in accordance with the norms of integrity or fail to conduct themselves in a manner as ought to be done by the class to which they belong, is actionable under the Act. This is apart from abuse and misuse of power, corruption, acting for personal gain or for benefit of family and friends, possession of assets disproportionate to known source of income etc. All the above are also actionable under the Act.

The conduct of members of the Legislative Assembly while in the House and similarly the conduct of the members of the Municipal Corporation of Delhi, while in the Corporation, is governed by the rules framed by the Legislative Assembly and provisions of the Delhi Municipal Corporation Act, 1957 respectively. However, there is no code of conduct, rules or norms prescribed for conduct of the elected representatives outside the House or Corporation and in public life.

The present case is an illustration, where two engineers were called for a meeting to the MLA's office and beaten mercilessly, allegedly by the supporters/persons, having access to office of the MLA, for their actions in discharge of official duties which were allegedly not to the liking of the elected representative and/ or his supporters.

The norms of conduct, duties and responsibilities qua the constituents, supporters and members of the general public in discharge of their public duties to be observed, need to be specified to serve as guidelines. The absence of prescribed norms of conduct, duties and responsibilities is not conducive to development of healthy practices, conventions and procedures. Ethical norms and good practices would prevent maladministration and corruption. Moreover, the existence of these norms and guidelines serve as a subconscious reminder to incumbents. Besides, this would also result in clearly setting out the conduct and norms of behavior which are expected from the elected representatives and transgression of which is actionable under the Act.

I therefore, consider it expedient in exercise of jurisdiction U/s 16 of the Delhi Lokayukta and Upalokayukta Act, 1995 and even otherwise as a matter of reform to recommend to his Excellency, the Lt. Governor of Delhi, to initiate the process for framing and codifying the Rules of Conduct governing the elected representatives of the Legislative Assembly of NCT of Delhi and the Municipal Corporation of Delhi, in public life and outside the Assembly and the Corporation. Copy of this order be endorsed to his Excellency the Lt. Governor of Delhi.

-Sd/-

Justice Manmohan Sarin
Lokayukta

Dated : 10.8.2009